

REMARKS

In the Office Action mailed September 8, 2005, claims 24, 43, 45-52 and 54-56 were pending and stood rejected. With this response, Applicants have amended claim 43 and added new claim 57. Applicants respectfully submit that claims 24, 43, 45-52 and 54-57 are now allowable.

Claim Amendments

Applicants have amended claim 43 to recite that the guide pin includes at least one flat capable of grinding away disk material. Support for this amendment is found in paragraph 0109 of the specification as published (Pub. No. 2004/0082957).

Applicants have also added new claim 57 which is directed to a method of laparoscopically implanting a spinal fusion implant into a disk space separating opposing end plates of a first and second vertebra. Support for this claim is found in paragraphs 0167-0180 and 0200-0202 of the specification as published.

Claims Rejection - Double Patenting

Claims 24, 43, 45-52 and 54-56 were rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over the claims of U.S. Patent No. 5,489,307 (the "'307 patent"). Further, claims 43, and 45-48 were rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over the claims of U.S. Patent No. 5,700,291 (the "'291 patent"). Although the Applicants do not concede that the claims are unpatentable over the claims of the '307 and '291 patents, the Applicants have herewith filed a terminal disclaimer in order to obtain allowance of the pending claims.

Claim Rejections - 35 U.S.C. § 103(a)

Claims 43 and 45-48 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,484,437 ("Michelson") in view of U.S. Patent No. 4,545,374 ("Jacobson"). The Office Action states that the use of a cannula was well known in the art as seen from Jacobson. The Office Action also states that a cannula would have been obvious from the devices used by Michelson and that the forward projecting nipple 260 of Michelson

serves as a guide pin with the drill portion 250 working in conjunction with sleeves 140 and 242. *See* FIGS. 11A and 11C; column 23, lines 1-9.

The Applicants do not dispute that "the use of a cannula was well known in the art." Office Action, at 3. However, the fact that the use of a cannula in surgical procedures was known does not render the present invention obvious in light of Michelson. Michelson does not teach, suggest, or disclose, alone or in combination with Jacobson, the remaining elements of claim 43.

The Applicants have amended claim 43 to recite that the guide pin includes "at least one flat capable of grinding away disk material." In contrast, Michelson teaches that the nipple 260 is "bullet-shaped in its leading aspect so as to ease its entrance into the disc space and to urge the vertebrae apart." Col. 23, lines 1-9. Furthermore, as illustrated in FIG. 11C, the nipple 260 is shown as being smooth. Therefore, Michelson does not recite or suggest a feature on the nipple 260 that is capable of grinding away disk material.

Claim 43 also recites that the "guide pin [is] attached to said boring tool for movement therewith and prevented from movement independent from said boring tool." Michelson does not recite or suggest that the nipple 260 is attached to the drill end 260 for movement with the drill end 260. Instead, Michelson teaches that the "nipple 260 is distracting, stabilizing as it resists any tendency of the vertebrae to move together, is self-centering to the Drill portion 250 when working in conjunction with Sleeves 140 and 242, and virtually assures the symmetrical resection of bone from the opposed vertebral surfaces." Col. 23, lines 1-9. Furthermore, as stated above, the nipple 260 does not include flats capable of grinding away disk material. Thus, since the nipple 260 performs only a distracting and stabilizing function, and does not grind away disk material, there is no need for the nipple 260 to rotate with the drill end 250.

For at least these reasons, the Applicants believe that independent claim 43, as amended, is not obvious in light of the cited references. Claims 45-48, being ultimately dependent on claim 43, are also not obvious.

Subject to the aforementioned terminal disclaimer, the Applicants believe claims 24, 43, 45-52 and 54-57 are in condition for allowance. In view thereof, the Applicants

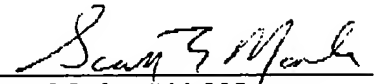
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respectfully request that the rejections be reconsidered and withdrawn, and that the application is approved for allowance.

Respectfully Submitted,

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